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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FOUR

In re A. M., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

A. M.,

Defendant and Appellant.

A142773

(Solano County
Super. Ct. No. J41938)

A. M. (Minor) appeals jurisdictional and dispositional orders finding he unlawfully drove or took a motor vehicle, continuing him as a ward of the court, and placing him on probation. He contends the juvenile court failed to exercise its discretion to determine whether to treat his “wobbler” offense as a felony or a misdemeanor. We agree with Minor, and shall remand the matter to the juvenile court for the necessary determination.

I. BACKGROUND

An initial wardship petition was filed in April 2013, and Minor was adjudged a ward of the court after he admitted one count of felony grand theft. (Welf. & Inst. Code,¹ § 602; Pen. Code, § 487, subd. (c).) Minor was the subject of two more petitions in 2013,

¹ All undesignated statutory references are to the Welfare and Institutions Code. All rule references are to the California Rules of Court.

and each time the court continued him as a ward and reinstated him on probation after he admitted misdemeanor disturbing the peace. (Pen. Code, § 415, subds. (1) & (2).)

The petition at issue here, filed in July 2014, alleged that Minor committed felony unlawful driving or taking of a motor vehicle (Veh. Code, § 10851, subd. (a), count one) and felony receiving stolen property (Pen. Code, § 496d, subd. (a), count two). At a contested jurisdictional hearing, the juvenile court sustained the petition as to count one only. At the dispositional hearing, the court continued Minor as a ward, placed him in the custody of his parents, and imposed terms of probation.

II. DISCUSSION

Minor contends the juvenile court failed to exercise its discretion to determine whether his most recent offense was a felony or a misdemeanor.

The offense the juvenile court found Minor had committed, unlawful driving or taking of a motor vehicle, is a wobbler, that is, an offense that may be sentenced as a felony or a misdemeanor.² (Veh. Code, § 10851, subd. (a); *People v. Douglas* (1999) 20 Cal.4th 85, 88.) When a minor is found to have committed a wobbler, the juvenile court, exercising its discretion, must declare whether the offense is a misdemeanor or a felony. (§ 702;³ *In re Manzy W.* (1997) 14 Cal.4th 1199, 1201, 1207 (*Manzy W.*); *In re Jacob M.* (1989) 210 Cal.App.3d 1178, 1182.) “If any offense may be found to be either a felony or a misdemeanor, the court must consider which description applies and expressly declare on the record that it has made such consideration, and must state its

² A violation of section 10851, subdivision (a), is punishable “by imprisonment in a county jail for not more than one year or pursuant to subdivision (h) of Section 1170 of the Penal Code” If an adult is found guilty of violating this provision and is punished by imprisonment in jail for not more than one year, the offense is a misdemeanor. If that adult is punished pursuant to Penal Code section 1170, subdivision (h), the offense constitutes a felony. (Pen. Code, § 17, subds. (a) & (b).)

³ Section 702 provides in pertinent part: “If the minor is found to have committed an offense which would in the case of an adult be punishable alternatively as a felony or a misdemeanor, the court shall declare the offense to be a misdemeanor or felony.”

determination as to whether the offense is a misdemeanor or a felony.”

(Rule 5.780(e)(5).)

If the juvenile court fails to make a formal declaration of whether a wobbler should be treated as a felony or a misdemeanor, remand for the court to make that determination is not “ ‘ automatic.’ ” (*Manzy W.*, *supra*, 14 Cal.4th at p. 1209.) Rather, the question for the reviewing court is whether the record shows “the juvenile court was aware of its discretion to treat the offense as a misdemeanor and to state a misdemeanor-length confinement limit.” (*Ibid.*) If the juvenile court failed to make an express determination but the record shows it was aware of and exercised its discretion to determine whether the offense was a felony or misdemeanor, the matter need not be remanded for the court to make that determination; if, on the other hand, the record does not show such an exercise of discretion, the matter must be remanded for the court to do so. (*Ibid.*)

In *Manzy W.*, the court committed the minor to a felony-level term for his offense but did not expressly state it was exercising its discretion to declare the offense a felony. Neither the court nor the minor’s counsel stated that the court had discretion to declare the offense a misdemeanor, and the dispositional report consistently referred to the offense as a felony. In those circumstances, our high court concluded it would be “mere speculation to conclude that the juvenile court was actually aware of its discretion in sentencing [the minor].” (*Manzy W.*, *supra*, 14 Cal.4th at p. 1210.) Accordingly, the matter was remanded for the juvenile court to make an express declaration pursuant to section 702. (*Id.* at p. 1211.)

At the dispositional hearing here, the juvenile court stated, “The petition is deemed a felony, pursuant to count 1,” but it did not expressly declare that it had considered whether the offense was a felony or a misdemeanor, as required by rule 8.780(e)(5). The Attorney General argues the court’s use of the word “deemed” indicates that it knew the offense could have also been deemed a misdemeanor; accordingly, she argues, the record shows the court was aware of and exercised its discretion.

On this record, we cannot agree with the Attorney General that the court's use of the word "deemed" reflected an understanding that Minor's offense was a wobbler. It is clear from the record that the juvenile court was following the recommendation of the probation department, using a form provided by the department. That form, as pertinent here, included a checked box stating "Petition deemed," which was followed by boxes for "felony," "misdemeanor," "infraction," "VCOP," and "DEJ Non-Compliance." In this case, the box for "felony" was checked. The minute order form used by the court likewise contains the language "Petition deemed" with boxes for "felony," "misdemeanor," "infraction," and "VCOP." The same type of minute order form was used for Minor's three earlier sustained petitions; in one of those cases, Minor had admitted a felony and the form minute order stated the petition was "deemed" a felony; in the other two cases, the misdemeanors Minor admitted were not wobblers, and the boxes indicating the offenses were "deemed" misdemeanors were checked. (Pen. Code, § 415, subds. (1) & (2).) Thus, the court's use of the term "deemed" appears to reflect standard language routinely used in juvenile cases to describe the nature of the offense, whether or not a wobbler was involved. In these circumstances, it does not show the juvenile court actually knew that Minor's most recent offense was a wobbler and that it had discretion to treat it either as a misdemeanor or as a felony.

Nor does anything else in the record indicate the court knew of and exercised its discretion. The operative petition alleged Minor committed a felony violation of Vehicle Code section 10851, subdivision (a). The "Juvenile Court Information Sheet" likewise described the offense simply as a felony. The probation officer's report referred to the sustained offense as a felony. It does not appear that anyone at the jurisdictional or dispositional hearings drew the court's attention to the fact that the offense was a wobbler. On this record, we cannot conclude the juvenile court exercised its discretion when it stated the offense was a felony. We shall, therefore, remand the matter to the juvenile court to make the required determination.

In his opening brief, Minor also challenged some of his terms of probation and argued that the juvenile court miscalculated his maximum term of confinement. In his

reply brief, however, he informed us that those issues have since become moot by the juvenile court's January 22, 2015 action in dismissing the petition based on his satisfactory completion of probation. (§ 786.) Accordingly, we shall not consider those issues.

III. DISPOSITION

The jurisdictional order is affirmed. The dispositional order is reversed and the matter is remanded to the juvenile court for compliance with section 702 and rule 5.780(e)(5).

Rivera, J.

We concur:

Ruvolo, P.J.

Reardon, J.